

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING JULY 14, 2004**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, July 14, 2004, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Walter Tarmann

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Amy A. Barrows

OTHERS PRESENT: Charles Russell, BA04:053, contractor
Pat Blanchard, BA04:052, petitioner
Nat Cobb, BA04:052, neighbor
Carl Dunkovich, BA02:120, petitioner
Michael Bedis, BA04:051, petitioner
Julia Burton, BA04:049, petitioner
Kurt & Rose Bostrom, BA04:050, owner
Lori Schoenbeck, BA04:048, owner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew

I move we approve the Summary of the Meeting of June 23, 2004, with the following change:

The Summaries of Previous Meetings shall contain the following revised statement. "The motion was seconded by Mr. Bartholomew and carried with four in favor; Mr. Dwyer, as an alternate Board Member, abstained for the reason of not being in attendance at the June 9, 2004 meeting."

The motion was seconded by Mr. Ward and carried unanimously.

NEW BUSINESS:

BA04:048 LORI A SCHOENBECK

Mr. Tarmann *I make a motion to adopt the staff's recommendation for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Schultz and carried with 3 yes votes. Mr. Bartholomew voted against the motion.

The staff's recommendation was for **denial**.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The area could be stabilized in a different manner, which would not require a structure directly adjacent to the waterway. If stabilized properly with vegetation and erosion matting, the slope will result in reduced negative impacts to the natural resources in the area by allowing chemical and stormwater runoff filtration into the vegetation and soil prior to entering the waterway. The natural landscape will also provide a better habitat for wildlife that prefer the transitional area between land and water. Our office cannot regulate the stone mulch area, which exists between the boathouse and the waterway, but would prefer vegetation and erosion matting for the same reasons mentioned herein

BA04:049 JULIA BURTON (Lemel Homes, Inc.)

Mr. Schultz *I make a motion to adopt the staff's recommendation for the reasons stated in the Staff Report, with the following changes to the Conditions:*

Condition No. 2 shall change to read, "The residence, including the attached garage shall not be greater than 2,200 sq. ft. in size. The proposal shall include at least a 400 sq. ft. attached garage. (An exposed basement is not included in the floor area or open space calculations.) This would allow 36.2% floor area ratio and 3,877.5 sq. ft. of open space."

Condition No. 6 shall be added and shall read, "No stove or range is permitted in the lower level, (basement)."

Condition No. 7 shall be added and shall read, "If a level above the garage is proposed for storage, it must be less than 6 ft. in height."

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for **denial** of variances from the shore and floodplain setbacks and **approval** of variances from the floor area ratio and open space requirements, with the following conditions:

1. The proposed residence, attached garage and any appurtenances including decks, patios and stairways must be located at least 8.3 ft. from the side lot lines, 5 ft. from the 66 ft. established road right of way, 29.25 ft. from the lake and 25 ft. from the 100-yr. floodplain, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot lines, road, lake and 100-yr. floodplain as the overhangs exceed two (2) ft. in width.
2. The residence including the attached garage shall not be greater than 1,800 sq. ft. in size. The footprint shall not exceed 1,300 sq. ft. and shall include at least a 400 sq. ft. attached garage. (An exposed basement is not included in the floor area or open space calculations.) This would allow 29.6% floor area ratio and 4,777.5 sq. ft. of open space.
3. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
4. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed residence, attached garage and any appurtenances, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
5. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. **No retaining walls are permitted.**

The reasons for the recommendation, as stated in the Staff Report, are as follows:

If approved as conditioned, the petitioner will enjoy a reasonable use of the property in the form of a new single-family residence with an attached garage with the intent to eliminate any potential adverse affects on adjoining properties and the natural resources in the area. Due to the extremely non-conforming size of the lot, a variance is required from the floor area ratio and open space to allow any reasonably sized residence. As conditioned, the approval allows the petitioner minimal amount of relief from the Ordinance requirements, while allowing a significant use of the property.

The approved structure still conforms to the general desirability of the neighborhood. Other lots in the area with small lot sizes have similar sized structures and are located close to the road. The approval also results in removing an extremely non-conforming detached garage on the property and decreases the non-conforming nature of the property significantly, which is the stated objective of the laws. Therefore, as recommended, the property will be in substantial conformance with the purpose and intent of the Ordinance

BA04:050 KURT AND ROSE BOSTROM

Mr. Bartholomew

I make a motion to adopt the staff's recommendation for the reasons stated in the Staff Report, with the following changes to the Conditions:

Condition No. 3 shall be removed.

Condition No. 4 (new Condition No. 3) shall change to read, "The lots shall be combined by a Certified Survey Map. The Certified Survey Map must be approved by the Town of Delafield and the Planning and Zoning Division staff, and recorded in the Waukesha County Register of Deed's office, within 6 months of this approval."

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for **approval**, with the following conditions:

1. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed patio, gazebo and walls does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.
2. The proposed patio and retaining walls shall not be located any closer to Walks Island Road than the existing patio and retaining walls.
3. No additional detached structures shall be permitted on the property, unless the gazebo is removed and the future proposed structure is approved by the Waukesha County Board of Adjustment.
4. The lots shall be combined by a Certified Survey Map. The Certified Survey Map must be approved by the Town of Delafield and the Planning and Zoning Division staff, and recorded in the Waukesha County Register of Deed's office, prior to the issuance of a zoning permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

If approved as conditioned, the petitioner will enjoy a reasonable use of the property. Very little will change in relation to the existing structures other than making the appearance more appealing and safe for the residents and visitors. The proposed patio and walls extend a few feet further towards the shoreline and floodplain, but still comply with the shore and floodplain setback requirements. Walks Island Road is a minor road with very minimal traffic and the residence is located only 1.5 ft. from the road setback. The road users would not be further impacted by the proposed improvements. The accessory building floor area ratio is being slightly increased by the gazebo, however, the existing garage already exceeds the accessory building floor area ratio and the proposed gazebo causes a very small increase in percentage. Therefore, the proposal as requested, is within the spirit and intent of the Ordinance

BA04:051 MICHAEL BEDIS

Mr. Schultz

I make a motion to adopt the staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for **approval**, with the following conditions:

1. The 50 sq. ft. shed shall be removed prior to the issuance of a zoning permit.
2. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
3. A detailed cost estimate including a breakdown of the cost of materials and labor for each structure must be submitted to the Planning and Zoning Division staff, prior to the issuance of a zoning permit.
4. The second story addition shall not extend beyond the footprint of the existing residence and the overhangs shall not exceed 2 ft. in width.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the requested special exceptions from the shore and floodplain setbacks, with the recommended conditions, will allow the petitioner to upgrade and increase the size of the residence without negatively impacting the surrounding properties or the natural resources in the area. The proposal does not violate the floor area ratio or open space standards for the District and the addition will not be located any closer to the shore and floodplain than what already exists. The existing residence is in good condition and it would be impractical to require the petitioner to tear down or

relocate the structure since there is not a conforming location on the property due to the unique characteristics of the peninsula lot. Therefore, the petitioner's proposal is within the spirit and intent of the Ordinance.

BA04:052 PATRICIA BLANCHARD

Mr. Ward

I make a motion to adopt the staff's recommendations, with the following modifications to the conditions and reasons stated in the Staff Report.

Condition No. 1 shall read, "24 ft. +/- inches, as presented at the July 14, 2004 meeting, shall be the maximum width sold to the property owner to the south."

"...Prior to the issuance of a zoning permit" shall be removed from Condition No. 2

The reasons shall read, "Approval of the request, as conditioned, will allow the petitioner to sell land to the adjacent property to the south, increasing the conformity of the adjacent property and slightly decreasing the conformity of the subject parcel. Since the lot could not increase its conformity to meet the requirements of not abutting a public road, unless combined with another lot, of which residences are contained, it would not be reasonable to deny the proposal."

The motion was seconded by Mr. Bartholomew and carried unanimously.

Please Note: Condition No. 3 was removed from the decision sheet because it is not permissible to add a condition directly impacting a property that is not the subject property for the variance request.

The staff's recommendation was for **approval**, with the following conditions:

1. 15 ft. shall be the maximum width sold to the property owner to the south. This will maintain a 120 ft. width on the subject parcel.
2. A Certified Survey Map for both the receiving and subject lot, in conformance with the above condition, must be approved by the Town of Eagle and the Waukesha County Planning and Zoning Division staff, and recorded in the Waukesha County Register of Deed's office, prior to the issuance of a zoning permit.
3. The property owner of W345 S10503 HWY "E" must apply for a zoning permit for the remodeling and porch construction, prior to Certified Survey Map approval and prior to acquiring additional lands. If a zoning permit has been issued for said activity, the property owner shall supply documentation of such.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the request, as conditioned, will allow the petitioner to sell land to the adjacent property to the south, increasing the conformity of the adjacent property and slightly decreasing the conformity of the subject parcel. Since the approval, as conditioned, would keep the subject property in conformance with the R-3 requirements, 120 ft. in width and 20,000 sq. ft. in size, if the lot abutted a public road, and the lot could not increase its conformity to meet the requirements of not abutting a public road, unless combined with another lot, of which residences are contained, it would not be reasonable to deny the proposal.

BA04:053 PETER JOHNSTON (Charles Russell)

Mr. Schultz

I make a motion to adopt the staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report, with the following changes to the reasons.

The reasons shall be revised to read, "The approval of this request, with the recommended conditions, will enable the petitioners to continue the use of the property consistent with the carrying capacity of the land. The petitioner is trying to preserve an old stone fireplace in the structure, which makes it difficult for them to relocate the residence to comply with the offset requirements. However, if the new foundation requires the petitioner to raise the residence and if the existing residence or deck is located within the 100-yr. floodplain, then it shall be relocated as set forth in Condition No. 3 above and fill shall be added to comply with the floodproofing standards of the Ordinance for the purpose of protecting the safety and welfare of the general public. As conditioned, approval of this request is in conformance with the purpose and intent of the Ordinance."

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for **approval**, with the following conditions:

1. A revised plat of survey shall be submitted including the location of the 100-yr. floodplain.
2. The residence, deck and patio shall be located outside the 100-yr. floodplain. If not, the residence must be raised to at least the flood protection elevation, 2 ft. above the 100-yr. floodplain elevation (922' amsl), and the crawlspace located at the floodplain elevation or higher. The fill shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such elevation, at least fifteen (15) feet beyond the limits of the structure. Where such distance cannot be achieved because of lot lines or other similar constraints, said fill elevation shall extend as far as is practical, resulting in no slope conditions at its terminus which may adversely affect surface water drainage on adjacent properties.

3. If the residence needs to be raised for floodproofing or for the construction of the foundation, the residence and deck shall be relocated 15.3 ft. from the west lot line and comply with all other setbacks, with the exception of the shore and floodplain. The residence and deck shall be located no closer to the shore and floodplain than the existing residence and deck.
4. The deck shall not be any larger than the existing deck.
5. The patio shall be located at least 20 ft. from the right-of-way of Spring Lake Drive.
6. If the residence must be relocated in accordance with the above conditions, a stakeout survey showing the location of the residence, deck and patio in compliance with the aforementioned conditions, shall be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
7. If the residence must be raised and relocated, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit in order to ensure the fill for the residence does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.
8. If the existing residence and/or deck is located within the 100-yr. floodplain, upon completion of the project, certification shall be obtained from a registered land surveyor that the floor elevations are in conformance with the above conditions. A copy of that certification must be submitted to the Town of Mukwonago Building Inspector and the Planning Division staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will permit the petitioners continued use of their property, without increasing the size of the structures existing on the property. Since a majority of the property is floodplain, it would be difficult to relocate the residence in a more conforming location. The petitioner is trying to preserve an old stone fireplace in the structure, which makes it difficult for them to relocate the residence to comply with the offset requirements. However, if the new foundation requires the petitioner to raise the residence and if the existing residence or deck is located within the 100-yr. floodplain, then it shall be relocated into the most conforming location possible and filled to comply with the floodplain standards for the purpose of safety and welfare. As conditioned, approval of this request is in conformance with the spirit and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA02:120 CARL DUNKOVICH

Mr. Ward *I make a motion to adopt the staff's recommendation to change Condition No. 1 to read, "The proposed deck including any proposed stairways must be located at least 25 ft. from the shoreline of Okauchee Lake."*

The motion was seconded by Mr. Barthlomew and carried unanimously.

ADJOURNMENT:

Mr. Ward *I move we adjourn this meeting at 9:05 p.m.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Respectfully submitted,

Amy A. Barrows
Secretary, Board of Adjustment